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June 28, 1996

The Honorable William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

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Re: In the Matter of Implementation of the Pay
Telephone Reclassification and Compensation
Provision of the Telecommunications Act of 1996
-- CC Docket No. 96-128

Dear Secretary Caton:

Enclosed are an original and 14 copies of the comments
of the New York Department of Public Service in the above
referenced proceeding. A diskette has been provided to the
Common Carrier Bureau's Enforcement Division.

Respectfully submitted,

Mary E. Burgess

Mary E. Burgess
Assistant Counsel

Enclosures

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No. of copies received 0+14

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of the
Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996

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CC Docket No. 96-128

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Comments Of
The New York State
Department Of Public Service

Mary Burgess
Penny Rubin
Of Counsel

Dated: July 1, 1996
Albany, New York

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding released June 6, 1996. In its Notice, the Commission seeks comment on proposed rules governing the payphone industry, pursuant to Section 276 of the Telecommunications Act of 1996 (the Act). Specifically, the Commission seeks comment on proposals to implement the following objectives set forth in the Act: (1) compensation for "each and every completed intrastate and interstate call using a payphone;" (2) elimination of all subsidies for LEC payphones, including "access charge payphone service elements;" (3) prescription of nonstructural safeguards for Bell Operating Company (BOC) payphones; (4) promulgation of rules permitting the BOCs to negotiate with payphone location providers about a payphone's presubscribed interLATA carrier, unless the Commission finds that such negotiations are "not in the public interest;" (5) promulgation of rules permitting all payphone providers to negotiate with location providers about a payphone's presubscribed intraLATA carrier; and (6) establishment of public interest payphones.

While reserving our right to challenge the constitutionality of the Act and the sum of its provisions, NYDPS will assume arguendo implementation of the Act's provisions with respect to payphones. Section 276 requires the Commission to develop rules to promote competition among payphone providers and to protect the public interest, but as Chairman Hundt recognized in his statement accompanying the Notice, the Act does not specify how the Commission is to carry out its mandate.

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As to the specific issues raised in the Notice, NYDPS agrees that the scope of this proceeding should be to prescribe compensation where payphone providers are not already being compensated and that it need not prescribe per-call compensation for calls for which Payphone Service Providers (PSPs) already receive compensation. With regard to establishing a fair rate of compensation for such calls, NYDPS supports the Commission's proposal that would allow the states, in the first instance, to determine fair compensation for all completed intrastate calls and to continue to set coin rates for local payphone calls.

In addition, NYDPS prefers the Commission's proposed option that would establish a "carrier pays" system to compensate PSPs for dial around calls. This arrangement is preferable to a "set use fee system" in which the end user pays either directly at the payphone location or is billed later by the interexchange carrier (IXC) or operator service provider. Finally, NYDPS does not support the establishment of national public interest payphones. Instead, we recommend that the need for and means of maintaining public interest payphones be determined by the individual states.

I. COMMISSION RULES REGARDING INTRASTATE PAYPHONE
SERVICES SHOULD RESPECT THE STATES' JURISDICTION

In its Notice, the Commission claims that it could assert its jurisdiction under Section 276 by exercising one of three available options. The first is for the Commission to prescribe a specific nationwide local coin rate, the second is for the

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Commission to issue national guidelines to be followed by the states in setting local rates, and the third is for the states to continue to set local payphone coin rates.

In light of the fact that "states have long had a traditional and primary role in regulating payphones"(¶ 22), the Commission should adopt its third option. The states, in the first instance, should continue to set rates for local payphone calls according to factors within their discretion. In fact, the states are not precluded from promulgating and enforcing regulations in this area, provided such regulations are not inconsistent with any rules adopted by the Commission pursuant to its §276 authority.

Payphone usage is predominately local and therefore intrastate, and the public benefits of payphones are also largely local in nature. Thus, states have considerable interest in payphone services that extend beyond the pro-competitive concerns embodied in Section 276. While Section 276 requires the Commission to ensure that PSPs are fairly compensated for all calls, including intrastate calls, and that any existing subsidies to LEC payphone services be removed from basic exchange and exchange access rate structures, this mandate does not require the Commission to engage directly in intrastate ratesetting. The Commission could defer to the states to establish intrastate payphone rates and compensation mechanisms. We recommend that in implementing Section 276 with respect to intrastate payphone services, the Commission establish rules that intrude minimally upon the states' jurisdiction over these services.

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II. THE STATES ARE BETTER POSITIONED
TO ESTABLISH INTRASTATE COMPENSATION RATES

The Commission seeks comment on what constitutes "fair" compensation and how it should "ensure" that each PSP receives such for calls originated on its payphone. Most calls originating on payphones fall within one of the following categories: (1) coin calls; (2) directory assistance calls; (3) operator service ("0+" and "0-")¹ calls; (4) access code calls (using e.g., "10XXX" codes and "1-800" or "950" carrier access numbers); and (5) subscriber 800 calls. Each of these categories can be further subdivided among local, intraLATA, intrastate interLATA, interstate interLATA, and international calls. Each type of call is a potential source of revenue for the payphone owner, whether the revenue is derived from coins deposited into the payphone, through commissions received from operator service providers, or from carrier compensation mandated by the FCC or the states.

The best means to ensure that PSPs are fairly compensated on intrastate calls is for the states to establish intrastate compensation rates. The states are best able to determine the costs associated with providing payphone service, while addressing state-specific public interests. Moreover, the establishment of fair compensation rates and the elimination of any intrastate

¹ A 0+ call occurs when the caller dials "0" plus the called telephone number. 0+ calls include credit card, collect, and third number billing calls. Second Report and Order, 7 FCC Rad at 3251, n.4. 0- call transfer service is a service offered by Lees to Sops under which Lees transfer a 0- call (when a caller dials only the digit "0" and then waits for operator intervention) to the OSP requested by the calling party. Id. at 3255, n.44.

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payphone subsidies in each of the 50 states would be a complex undertaking that would unnecessarily burden the Commission. The public, the Commission, and the payphone industry itself would be better served by allowing the states to address the subsidy issue and continue to make these intrastate rate determinations.

III. A "CARRIER-PAYS" SYSTEM FOR COMPENSATION SHOULD BE ADOPTED

Since the Act directs the Commission to ensure that all PSPs are compensated, with limited exception, for "each and every intrastate and interstate call" using their payphones,¹ the Commission asks who should pay such compensation. Potential payers include: the caller using the payphone; the carrier over whose network the call is placed; or, in the case of subscriber 800 calls, the entity being called (who may or may not directly pass all the charges on to the caller using the payphone). In the past, industry participants have made two compensation proposals that might satisfy the per-call compensation requirement.² The first is a per-call "carrier-pays" mechanism to be applied to all dial-around calls, whereby the IXC that receives such a call from a payphone would be required to pay a per-call charge to the provider of the payphone. Each IXC would decide independently how to recover this cost. The second compensation proposal relies on a "set use fee." The set use fee is a fee that the IXC would bill

¹ 47 U.S.C. § 276(b)(1)(A).

² See, Second Further Notice, 10 FCC Rad 11457, at 11464-67 (1995); Ameritech/SW Bell Waiver, Order, DA 96-268 (released March 1, 1996) at para. 27.

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and collect from the end user. The fee would then be remitted to the PSP. In the case of the subscriber 800 and other toll-free number calls, the set use fee could be collected from the subscriber. For access code calls and operator-assisted calls, the set use fee would be collected from the end user that is billed for the call.

NYDPS prefers the adoption of a carrier-pays system and agrees with the Commission that this mechanism is preferable to the set use system because it imposes fewer transaction costs on the IXC and the caller. A set use surcharge appearing on consumers' phone bills for dial-around or toll-free calls would needlessly add to consumers' current confusion and dissatisfaction with payphone charges. We also oppose a set use system that requires payphone callers, including credit card callers, to deposit coins into the payphone before placing a call. We agree that a coin-deposit approach, which would require transient payphone callers to deposit coins in addition to providing call-billing information, would be unduly burdensome. Furthermore, we believe a carrier pays system would work optimally with "subscriber 800" calls. The 800 access service provider would compensate the payphone provider and, in turn, would recover that cost from its own subscribers in whatever manner the competitive 800 service market allows.

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IV. THE STATES SHOULD MAKE DETERMINATIONS
REGARDING PUBLIC INTEREST PAYPHONES

Section 276(b)(2) requires the Commission to "determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably."

NYDPS prefers the Commission's proposal to defer to the states to determine, pursuant to their own statutes and regulations, which, if any, payphones should be treated as "public interest payphones." Given the Act's definition and the further limitations suggested in the Conference Report,¹ the designation of public interest payphones will be determined by local conditions, and is thus facilitated by the application of general national guidelines. The states are better positioned to make these determinations, since the designation of a public interest payphone, in many cases, will require a field inspection.

CONCLUSION

The NYDPS prefers the adoption of rules for implementing the provisions of Section 276 with respect to intrastate payphone services that intrude minimally into the states' jurisdiction. The

¹ The Joint Explanatory Statement of the Committee of Conference states that the "public interest payphone" designation "does not apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract."

Comments of The New York State
Department of Public Service

July 1, 1996

Commission should allow states, in the first instance, to continue to determine fair compensation for all completed intrastate calls and to set coin rates for local payphone calls. In addition, NYDPS prefers the Commission's proposed option that would establish a "carrier pays" system to compensate PSPs for dial around calls. Finally, we oppose the establishment of national public interest payphone requirements and recommend that the need for and means of maintaining public interest payphones be determined by the individual states.

Respectfully submitted,



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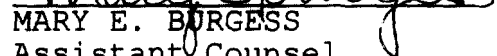
Dated: June 24, 1996
Albany, New York

CC Docket No. 96-128

Implementation of the Pay
Telephone Reclassification
and Compensation Provisions
of the Telecommunications Act
of 1996

CERTIFICATE OF SERVICE

I hereby certify that an original plus fourteen copies of the comments of the New York State Public Service Commission in the above-referenced proceeding were sent via Airborne Express to Mr. Caton, 2 extra copies and diskette were sent via Airborne Express to the Common Carrier Bureau, Enforcement Division, and copies were sent via first class United States mail, postage prepaid, to all parties on the attached service list.


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